

**IN THE UNITED STATE DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

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|---------------------------------|---|---------------------------------------|
| UNITED STATES OF AMERICA |) | |
| PLAINTIFF |) | |
| |) | |
| v. |) | CASE NO. : 1:17-CR-027-JPJ-PMS |
| |) | |
| JOEL A. SMITHERS |) | |
| DEFENDANT |) | |

DEFENDANT DR. JOEL A. SMITHERS
REQUESTED QUESTIONS FOR PRE-TRIAL VOIR DIRE

Pursuant to Federal Rule of Criminal Procedure 24, Defendant, Dr. Joel A. Smithers, by and through his attorney, respectfully requests that this Honorable Court submit the following questions to the jury panel and require answers returned with sufficient time for counsel review prior to the commencement of trial presently scheduled to begin April 29, 2019.

1. Have you heard or read anything about the case?

Please Circle Response: Yes No

2. Have you heard or read anything about other similar type of cases?

Please Circle Response: Yes No

3. If you have heard or read anything about this case, please tell/explain what you heard or read about this case

EXPLAIN:

4. If you have heard or read anything about similar case(s), please tell/explain what you heard or read about similar case(s):

EXPLAIN: _____

5. As a result of what you have seen, heard, read, or discussed about this case, have you formed an opinion or preconception as to the innocence or guilt of the defendant, Dr. Joel A. Smithers:

Please Circle Response: Yes No

6. Have you or anyone close to you ever suffered from chronic pain?

Please Circle Response: Yes No

If Yes, what did you or they do about it?

EXPLAIN: _____

7. Have you ever been prescribed medications for pain, such as Oxycodone, Oxymorphone, OxyContin, Hydrocodone, Methadone, or any other type of pain medication?

Please Circle Response Yes No

If so, please described your medical diagnoses; pain medications and length of time prescribed:

EXPLAIN: _____

-
8. Have you heard of any of the following medications: Oxycodone, OxyContin, Oxymorphone, Hydrocodone, Methadone, Xanax, Percocet, Lortab, or Suboxone?

Please Circle Response: Yes No

Please explain what you know about them: _____

9. Have you taken any of the drugs mentioned in Question 8?

Please Circle Response: Yes No

- A. Why were you prescribed the medications mentioned in Question 8?

B. EXPLAIN: _____

10. Have you or anyone close to you been prescribed a medicine for anxiety or to help you sleep?

Please Circle Response: Yes No

11. Do you have any preconceived ideas about a case involving drug usage that would affect your judgment as a fair and impartial juror?

Please Circle Response: Yes No

12. Have you, a member of your immediate family, a neighbor or close friend every been treated for drug abuse or alcohol addiction?

Please Circle Response: Yes No

13. Do you have any feelings positively or negatively, about doctors who prescribed pain medications?

Please Circle Response: Yes No

14. Are you familiar with the science of pain management or have you received any training on this science?

Please Circle Response: Yes No

15. Do you think a doctor should be criminally responsible of a patient who does not follow the doctor's instructions regarding medications?

Please Circle Response: Yes No

16. Do you think a doctor should be criminally responsible if a patient lies to the doctor regarding the patients' symptoms?

Please Circle Response: Yes No

17. Have you ever had a bad experience with a doctor?

Please Circle Response: Yes No

18. Would your feelings about doctors affect your ability to be a fair and impartial juror in a criminal case where the defendant is a doctor?

Please Circle Response: Yes No

19. Have you or any family member ever sued a doctor for medical malpractice?

Please Circle Response: Yes No

20. There is a difference between a criminal case and a civil case. This is a criminal case, not a medical malpractice or civil case. That means that the government must prove more than simply Dr. Smithers acted negligently, recklessly, or that his conduct fell below a standard of care. The government in a criminal case against a doctor must

prove that the doctor wrote prescriptions outside the usual course of professional practice and for no legitimate medical purpose and that Dr. Smithers was not acting in good faith. Do you understand this very important difference?

Please Circle Response: Yes No

21. Would you agree that a doctor who fails to use reasonable care may be negligent but being negligent does not make the doctor a criminal?

Please Circle Response: Yes No

22. Would you agree that a doctor may make an error or be careless without being a criminal?

Please Circle Response: Yes No

23. Do you agree that if a doctor prescribed a patient medication and that patient overdoses, in disregard of the doctor's instructions, it is the doctor's fault?

Please Circle Response: Yes No.

24. Do you agree it is the doctor's fault if a doctor prescribes a patient medication and that patient does not follow the doctor's instructions on how to take the medication and the patient is harmed as a result?

Please Circle Response: Yes No

25. Do you agree it is the doctor's fault, if a patient mixes medications prescribed him with illegal narcotics and the patient is harmed as a result?

Please Circle Response: Yes No

26. Some of the witnesses in this case may be qualified as experts. Do you feel that experts retained or employed by the government are more or less believable simply because they are used and paid by the government?

Please Circle Response: Yes No

27. Do you agree than an alcoholic or drug addict can have other medical issues or conditions for which they need treatment?

Please Circle Response: Yes No

28. Have you, a family member, or a close friend every worked in a doctor's office, hospital, or at a pharmacy or any other business related to the medical field?

Please Circle Response: Yes No

29. Do you believe the government agencies should be allowed to dictate the medical treatment that doctors provide to their patients?

Please Circle Response: Yes No

30. Do you believe that government agencies should be allowed to dictate how doctor's prescribed medications to their patients?

Please Circle Response: Yes No

31. Do you understand that the Food and Drug Administration (FDA) studies and approves medications before they can be marketed and sold to doctors, pharmacies, hospitals and the public?

Please Circle Response: Yes No

32. Do you believe there should be more government regulation over prescription pain (opioid) medications?

Please Circle Response: Yes No

If Yes, why? _____

33. Do you disagree with this statement; “most doctors make their best effort to effectively treat and resolve their patients’ medical problems?”

Please Circle Response: Yes No

34. Have you ever felt that you could not trust a doctor who was providing you care?

Please Circle Response: Yes No

35. Have you ever felt that you could not trust a doctor who was providing care to someone close to you?

Please Circle Response: Yes No

36. Are you aware of a circumstance where someone has taken the medication that was prescribed to someone else, such as leftover or surplus medication that was prescribed to a spouse or family member?

Please Circle Response: Yes No

37. Do you believe that doctors and healthcare providers who prescribe pain medications are solely responsible for the effects that the prescribed medication have on their patients?

Please Circle Response: Yes No

38. Do you believe that doctors and healthcare providers are in a position to prevent all negative effects that result from prescribing pain medication?

Please Circle Response: Yes No

39. Do you believe that patients who are prescribed controlled substances by their healthcare provider have a personal responsibility to use their medication responsibly and as prescribed?

Please Circle Response: Yes No

40. Do you believe that drug addiction is a result of the decisions made by the person who is addicted?

Please Circle Response: Yes No

41. Do you believe that all narcotic pain (opioid) medication should be illegal, even if prescribed by a doctor or healthcare provider?

Please Circle Response: Yes No

42. Do you believe that it is wrong or immoral for a doctor or healthcare provider to prescribe narcotic pain (opioid) medication to a patient?

Please Circle Response: Yes No

43. Over the last several months, there has been substantial media coverage, for example, newspapers, television and other media, of an “epidemic” or opioid addiction. Are you aware of this coverage?

Please Circle Response: Yes No

If Yes, have you formed any opinion as to what you believe is the cause or causes of this “epidemic?”

Please Circle Response: Yes No

44. Do you believe that a physician or other healthcare provider should automatically and immediately discharge any patient from their practice for being a drug addict?

Please Circle Response: Yes No

45. Have you ever been the victim of a crime committed by someone you believe to be a drug addict?

Please Circle Response: Yes No

46. Do you have a family member, friend or acquaintance who has suffered from drug addiction?

Please Circle Response: Yes No

47. If yes to either 45 or 46, above. Do you feel that experience would prevent you from being able to be totally open minded in hearing and weighing the evidence in this case?

Please Circle Response: Yes No

RESPECTUFLY SUBMITTED

JOEL A. SMITHERS

BY COUNSEL

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CERTIFICATE OF SERVICE

I, Don M. Williams, Jr., hereby certify that I have this the 22nd day of April, 2019, electronically filed the foregoing with the Clerk of the Court using CM/ECF system which will send notification of such filing to the Assistant United States Attorney.

/s/ Don M. Williams, Jr.

DON M. WILLIAMS, JR.